

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

CERTUSVIEW TECHNOLOGIES, LLC	§
	§
Plaintiff,	§
	§
v.	§ No. 2:13-cv-346 (MSD) (TEM)
	§
S&N LOCATING SERVICES, LLC and	§
S&N COMMUNICATIONS, INC.	§
	§ Jury Trial Demanded
Defendants.	§

**DEFENDANTS' RENEWED MOTION FOR EXCEPTIONAL  
CASE FINDING AND ATTORNEYS' FEES**

Pursuant to Federal Rule of Civil Procedure 54(d)(2) and 35 U.S.C. § 285, S&N Communications, Inc. and S&N Locating Services, LLC (“S&N” or “Defendants”) file this Renewed Motion for Exceptional Case Finding and Attorneys’ Fees (the “Motion”) against CertusView Technologies, LLC (“CertusView”), and respectfully state as follows:

1. On January 21, 2015, the Court granted S&N’s Motion for Judgment on the Pleadings Based on Failure to Claim Patent-Eligible Subject Matter, rendering all of CertusView’s asserted patent claims ineligible under 35 U.S.C. § 101. (Ct.’s Op. & Order, ECF No. 250.) On February, 4, 2015, Defendants filed their first Motion for Exceptional Case Finding and Attorneys’ Fees (ECF No. 257.) On June 1, 2015, the Court entered an Order denying Defendants’ motion without prejudice to Defendants’ refiling their motion within fourteen (14) days after the latter of the Federal Circuit’s ruling on the merits of Plaintiff’s appeals or the Court’s entry of judgment with respect to S&N’s inequitable conduct counterclaims. (Ct.’s Op. & Order, ECF No. 329.)

2. On August 11, 2016, this Court entered a Judgment in favor of S&N and against CertusView. (Judgment, ECF No. 547.) On August 24, 2016, Defendants filed their second Motion for Exceptional Case Finding and Attorneys' Fees. (ECF No. 549.) On November 21, 2016, the Court entered an Order denying Defendants' second motion without prejudice to Defendants' refiling their motion within fourteen (14) days after the Federal Circuit issued a mandate finalizing judgment on the merits of CertusView's appeal of the Court's 35 U.S.C. § 101 ruling. (ECF No. 560.) The Federal Circuit affirmed this Court's § 101 ruling on August 11, 2017, and issued a mandate finalizing the judgment on September 18, 2017. (ECF No. 571.)

3. As the prevailing party, S&N seeks reasonable attorneys' fees under 35 U.S.C. § 285 since this is an "exceptional case."

4. In 2014, the Supreme Court lowered the standard for what constitutes an "exceptional case," explaining that a fee-seeking party need only show, by a preponderance of the evidence, that *either* "the case stands out from others with respect to the substantive strength of a party's litigating position (considering both the governing law and the facts of the case) *or* the unreasonable manner in which the case was litigated." *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 1756 (2014) (emphasis added). This case qualifies as "exceptional" under both prongs of *Octane Fitness*.

5. Considering the totality of the circumstances described herein and in the accompanying Memorandum of Law, this case certainly stands apart from the rest, and S&N respectfully requests that the Court find this case to be exceptional and award S&N its reasonable attorneys' fees under § 285.

WHEREFORE, S&N respectfully requests that the Court grant this Renewed Motion for Exceptional Case Finding and Attorneys' Fees in its entirety, and grant S&N all other relief to which it is entitled.

Dated: October 2, 2017

Respectfully submitted,

/s/ Brian L. Whisler

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Brian L. Whisler (Lead Counsel)  
Virginia Bar No. 30435  
E-mail: brian.whisler@bakermckenzie.com  
BAKER & MCKENZIE LLP  
815 Connecticut Avenue, NW  
Washington, D.C. 20006  
Telephone: (202) 452-7019  
Facsimile: (202) 416-6937

Michael A. Duffy  
E-mail: michael.duffy@bakermckenzie.com  
BAKER & MCKENZIE LLP  
300 East Randolph Street, Suite 5000  
Chicago, Illinois 60601  
Telephone: (312) 861-8000  
Facsimile: (312) 861-2899

John G. Flaim  
E-mail: john.flaim@bakermckenzie.com  
BAKER & MCKENZIE LLP  
2300 Trammell Crow Center  
Dallas, TX 75201  
Telephone: (214) 978-3000  
Facsimile: (214) 978-3099

ATTORNEYS FOR DEFENDANTS,  
S&N LOCATING SERVICES LLC AND  
S&N COMMUNICATIONS, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of October 2017, a true and correct copy of the foregoing document was filed with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Brian L. Whisler